

Amendments to the Drawings:

The attached replacement drawing sheet makes changes to Figs. 7-10 and replaces the original drawing sheet that shows Figs. 7-10.

Attachment: Replacement Drawing Sheet

REMARKS

Claims 1 and 2 are amended. Claims 1-6 are pending in the current application. In light of at least the following remarks, Applicant respectfully requests reconsideration and allowance of the pending claims.

Applicant appreciates the Office Action's indication that claims 5 and 6 would be allowable if rewritten in independent form. However, Applicant maintains that all of pending claims 1-6 are allowable for at least the following reasons.

I. Drawings

The Office Action objects to the drawings under 37 C.F.R. §1.84(p)(5) for not including various reference characters. Specifically, the drawings are objected to for not including reference to spring 43 and head 46. Fig. 8 is hereby amended to include reference characters 43 where erroneously left out in one location and erroneously indicated as 46 in another location. Fig. 10 is hereby amended to include reference character 46 where erroneously left out. Thus, Applicant respectfully requests withdrawal of the objection.

The Office Action objects to the drawings under 37 C.F.R. §1.84(p)(4) for using reference characters 41, 42, and 44 to refer to more than one thing. Fig. 7 is hereby amended to include reference character 39, previously indicated erroneously as 42, and to include reference character 38, previously indicated erroneously as 41. Fig. 8 is hereby amended to include reference character 41, previously indicated erroneously as 44 in two locations. Fig. 9 is hereby amended to include reference characters 45a and 45b previously indicated as 45 and 46. The specification is amended to recite reference characters 45a and 45b accordingly.

For the foregoing reasons, Applicant respectfully requests withdrawal of the objections.

II. Claim Rejections Under the Doctrine of Obviousness-Type Double Patenting

The Office Action rejects claims 1-3 under the doctrine of obviousness-type double patenting as unpatentable over claims 1, 2 and 5 of U.S. Patent No. 6,883,488 to Viitamaki in view of U.S. Patent No. 4,005,951 to Swinkels.

MPEP §804 (II)(B)(I) states that the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 U.S.C. §103(a) rejection. To establish a *prima facie* case of obviousness under §103(a), three criteria must be met: suggestion or motivation to combine; reasonable expectation of success; and the prior art must teach or suggest all the claim limitations. MPEP §2142. The above rejection has not alleged any motivation as to why one of ordinary skill in the art would have modified Viitamaki by Swinkels. A rejection without motivation to combine does not rise to a *prima facie* case of obviousness. MPEP §2143.01 (citing *In re Rouffet*, 149 F.3d 1350 (Fed. Cir. 1998)). The Office Action's allegation that one of ordinary skill in the art would have used the disclosure of Swinkels to modify the disclosure of Viitamaki because they disclose analogous devices does not satisfy the motivation requirement (*In re Khan*, 441 F.3d 977 (Fed. Cir. 2006)) but only suggests that they are analogous art. As the Office Action has not met the burden of a *prima facie* case of obviousness, and thus the requirements of an obviousness-type double patenting rejection, Applicant respectfully requests withdrawal of the rejection.

III. Claim Rejections Under 35 U.S.C. §112, Second Paragraph

The Office Action rejects claims 1 and 2 under 35 U.S.C. §112, second paragraph as unclear, essentially for using the word "means" in a non-legal manner. Claims 1 and 2 are amended to remove the non-legal use of the word means. Thus, Applicant respectfully requests withdrawal of the rejection.

IV. Claim Rejections Under 35 U.S.C. §102(b)

The Office Action rejects claims 1, 2, and 4 under 35 U.S.C. §102(b) as unpatentable over any one of: U.S. Patent No. 2,366,765 to Anderson, U.S. Patent No. 2,581,172 to Carson, German Utility Patent DE 20113784 owned by IAV GmbH (hereafter "IAV"), and German Patent 447,701 to Cozette. Applicant respectfully traverses each rejection.

Anderson discloses a pump having a shaft 8 to which is fixed an impeller having a hub portion 63 (fixed to shaft 8) (page 2, col. 2, lines 6-11) and a web having slots to receive vanes 73-76 (page 2, col. 2, lines 17-23). As the impeller is not eccentrically located on the shaft 8 (Figs. 1 & 2), Anderson at least fails to disclose an eccentric means comprising an eccentric part on a shaft, a first eccentric ring, and a second eccentric ring, as recited in claim 1.

In this respect, Cozette and IAV are physically identical to Anderson. That is, the devices of Cozette and IAV each have an impeller with radially movable vanes, which is non-eccentrically mounted on a shaft (Figs. 1 & 2 in Cozette, Fig. 1 in IAV). As with Anderson, both Cozette and IAV at least fail to disclose eccentric means comprising an eccentric part on a shaft, a first eccentric ring, and a second eccentric ring, as recited in claim 1.

Carson discloses a hydraulic transmission able to vary the rate of rotation between two shafts. Input shaft 30 is fixed to pump head 32 having slots 38 in which vanes 39 can radially slide (col. 2, lines 40-44). Output shaft 31 is fixed to pump casing end head 52 to which cylinder 50 and pump casing end head 51 are fixed (col. 3, lines 36-42). Cylinder 50, itself not eccentrically located with respect to output shaft 31, merely has an eccentric working chamber 59, the surface of which contacts the vanes 39 (col. 3, lines 51-56 and col. 6, lines 71-73). Loose rings 46 which contact the inner surfaces of vanes 39 are not fixed to either shaft. In operation, input shaft 30, output shaft 31, pump casing end heads 51 and 52, cylinder 50, and, likely, loose rings 46 all rotate (col. 1, lines 1-4 and Fig. 3).

Thus, Carson at least fails to disclose (1) a non-rotating annular outer casing; (2) eccentric means comprising an eccentric part formed in a power shaft, a first eccentric ring, and a second eccentric ring mounted with bearings; and (3) the first and second eccentric rings forming a substantially non-rotating entity, as recited in claim 1.

As none of the cited references teach all of the features of claim 1 and its dependents, Applicant respectfully requests withdrawal of the rejections.

V. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-6 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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JAO:JHB/sxb

Attachments:

Petition for Extension of Time
Replacement Drawing Sheet

Date: June 6, 2006
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